

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

04 12734 NMG

SPORTBOX, LLC.

Plaintiffs,

v.

XM SATELLITE RADIO INC. and
MAJOR LEAGUE BASEBALL

Defendants.

CIVIL ACTION No:

MAGISTRATE JUDGE SLA

RECEIPT # 4/11/2
AMOUNT \$ 100
SUMMONS ISSUED YES
LOCAL RULE 4.1 1
WAIVER FORM 1
MCF ISSUED 1000
BY DPTY. CLK. 1000
DATE 12/30/04

COMPLAINT

Plaintiff, Sportbox, LLC. ("Plaintiff") allege as follows:

Parties

1. Sportbox, LLC. ("Sportbox") is a Massachusetts Limited Liability Company with its principle place of business located at 107 Bridge Street, Newton, Massachusetts.
2. XM Satellite Radio Inc. ("XM"), with its principle place of business located at Washington, DC 1500 Eckington Place, NE Washington, DC 20002
3. Major League Baseball ("MLB") with its principle place of business located at 245 Park Avenue, 31st Floor, New York, NY 10167

Jurisdiction

4. This court has jurisdiction over this matter pursuant to 28 U.S.C. §1332.

Facts

5. On December 18, 2003 Sportbox received a License Agreement No. ML-4264 granting Sportbox the rights produce and sell "*Miniature portable AM/FM radios*" featuring logos from all MLB teams.
6. On April 20, 2004 the aforementioned License Agreement was amended to provide the Exclusive rights for all radios.
7. Sportbox was assured that they, "*see no reason why we wouldn't renew your license after the term is expired and continuously thereafter.*"
8. Sportbox has the exclusive rights under all the terms of the contract (ML-4264) as amended by the April 20, 2004 amendment.
9. As of 12-8-03 a check was sent to MLB for the amount of \$120,000 for the Exclusive Licensing Rights to "Portable Radios."
10. MLB accepted payment for the license on 12-15-03
11. Accordingly to MLB "*Sportbox is entirely current with all amounts due to MLB in order to enforce and enjoy such exclusivity through Dec. 31, 2004.*"
12. Other than the rights reserved by MLB in the contract, MLB does not have the right to grant, and no other third party can obtain, license rights comparable to what Sportbox has in the contract (Exclusive agreement for any and all portable radio), at least through the current term.
13. MLB and XM Announced a: ***11-Year, \$650 Million Broadcast And Marketing Agreement***

GENERAL ALLEGATIONS

Background

14. On December 18, 2003 Plaintiffs received a License Agreement No. ML-4264 granting Sportbox the rights produce and sell "*Miniature portable AM/FM radios*" featuring logos from all MLB teams.
15. As of February 1, 2003 Sportbox secured a license, with a year of deferred payments, to produce branded miniature AM/FM radios for Major League Baseball ("MLB").
16. In the summer of 2003 MLB demanded 5,000 radios to put in their gift bags for their VIP's for the All-Star Game in Chicago.
17. Sportbox produced the radios for MLB and had work at the events leading up to All-Star Game, known as "Fan Fest."
18. Plaintiff made every attempt possible to rectify the situation and proposed a considerably lesser to deal twice within Tuesday December, 21, and Wednesday December 22. Howard Smith approximately was screamed over the telephone using vulgar language and threatening guerrilla tactics concerning Plaintiffs on going exclusive license.
19. On April 20, 2004 the Plaintiff's aforementioned License Agreement (No. ML-4264) was amended granting them the "*Exclusive rights for all radios.*"
20. On October 20, 2004 MLB and XM announced an "11-year, \$650 million agreement enabling XM to broadcast games of every Major League Baseball (MLB) team nationwide" beginning with the 2005 regular season. XM, with more than 2.5 million subscribers nationwide, will be the official satellite radio network of MLB."
 - a. ***"MAJOR LEAGUE BASEBALL PARTNERS WITH XM SATELLITE RADIO FOR 11-YEAR, \$650 MILLION BROADCAST AND MARKETING AGREEMENT"***

21. Sportbox was reinforced and assured of their licensing rights license is clearly stated in e-mails, messages, and conversations such as the following:
- a. "You have exclusive rights to all portable radios..."
 - b. "No reason why we wouldn't renew your license after the term is expired and continuously thereafter."
22. Sportbox was assured that they,
23. Sportbox has the exclusive rights under all the terms of the contract (ML-4264) as contained on the April 20, 2004 amendment.
24. Sportbox is entirely current with all amounts due to MLB in order to enforce and enjoy such exclusivity through Dec. 31, 2004.
25. Other than the rights reserved by MLB in the contract, MLB does not have the right to grant, and no other third party can obtain, license rights comparable to what Sportbox has in the contract (Exclusive agreement for any portable radio), at least through the current term.
26. On Friday December 17th, 2004 Mr. Frabizio wrote an e-mail to **Gary Parsons, Chairman of the Board, and Lee Abrams, Chief Programming Officer**, reading as follows:

From: William V. Frabizio III [mailto:bill@sportbox.com]
Sent: Friday, December 17, 2004 3:35 PM
To: 'Gary.Parsons@xmradio.com'; 'Lee.abrams@xmradio.com'
Subject: XM & MLB via Sportbox...

Gary and/or Lee,

My name is William V. Frabizio III (Bill) and I am the CEO of Sportbox. As you may, or may not, know, Sportbox has the "*Exclusive rights for all portable radios*" throughout MLB. Sportbox can get you into most everywhere with our Exclusive License any other places that you imagine. Please let me know what your schedules permits and, perhaps, we could have a meeting before Christmas. Feel free to contact me direct 617-290-5620 or write back.

Sincerely,
Bill

27. In the attempts to initiate discussions or enter into negotiations with XM the following e-mail was sent to Ms. Rebecca Hanson, who was “handling this issue”

From: William V. Frabizio III [mailto:bill@sportbox.com]
Sent: Tuesday, December 28, 2004 6:32 PM
To: 'rebecca.hanson@xmradio.com'
Subject: Sportbox...

Rebecca,
I believe that we spoke briefly last week, and today I was put in touch with you via Gary Parsons concerning licensing and rights for branding any radio with respect to MLB. It would be greatly appreciated if you could give me a call today or as soon as possible. 617-290-5620 or e-mail...

Sincerely,
Bill

28. To be amended.

Equitable Relief

29. Plaintiff incorporates the allegations in each of the foregoing paragraphs as is fully set forth herein.
30. Plaintiffs have no adequate remedy at law. The injuries described above are, in part, not susceptible of being assessed monetarily with sufficient accuracy to permit their recovery in damages.
31. As to each item of relief sought by Plaintiffs, greater injury will be inflicted upon Plaintiffs by the denial of relief than will be inflicted upon Defendants by the granting of relief. More specifically, Plaintiffs are suffering and will suffer substantial and irreparable injury, more fully described above, whereas Defendants cannot and will not

be injured by being prevented from continuing their invasive, misleading, and wrongful course of business.

32. No harm will befall the public if an injunction prohibiting the described conduct is issued. In fact, an injunction will further ensure that Defendants' avoid such their invasive, misleading, and wrongful course of business when dealing with the public-at-large.
33. Plaintiffs have made every reasonable effort to settle this dispute and have fully complied with all obligations imposed by law.
34. Unless a Temporary Restraining Order is issued, substantial and irreparable injury to Plaintiffs' business property and reputation will be unavoidable.

WHEREFORE, Plaintiffs respectfully request that this honorable Court:

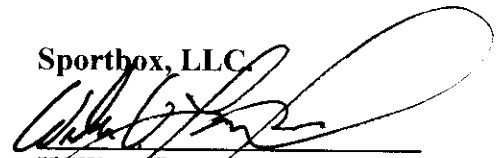
35. Grant Plaintiff equitable relief by a Temporary Restraining Order issued without hearing, to be continued until hearing, and after that made permanent, restraining and enjoining Defendants, their agents, and all those acting in concert, sympathy or conspiring with them from:
 - a. Advertising, distributing, promoting, etc... any relation to portable radios and defendants.
36. Enter judgment in favor of Plaintiffs on each of their claims;
37. Award statutory, actual, and compensatory Damages for the unlawful acts and practices alleged herein in an amount to be determined at trial;
38. Award all monies and profits wrongfully obtained by Defendants as a result of the unlawful acts and practices alleged herein in an amount to be determined at trial;

39. Award pre- and post- judgment interest as provided by statute;
40. Award Plaintiffs' costs reasonably incurred in this action together with reasonable attorneys' fees incurred herein; and
41. Award such other relief as the Court deems just and proper.

JURY DEMAND

Plaintiffs demand a jury trial on all claims so triable.

Sporthbox, LLC.



William V. Erabizio III

Sporthbox, LLC.

107 Bridge Street

Newton, MA 02458

(617) 916-1862

Pro Se

Dated: December 28, 2004

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

SPORT BOX, LLC.

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF *MAONLESEX*
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

DEFENDANTS

*MAONLESEX BASEBALL
X M RADIO*

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

ATTORNEYS (IF KNOWN)

II. BASIS OF JURISDICTION

(PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

(PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|---------------------------------------|---|---------------------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input checked="" type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input checked="" type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

V. NATURE OF SUIT

(PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input checked="" type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 510 Selective Service <input type="checkbox"/> 550 Securities/Commodities/Exchange <input type="checkbox"/> 575 Customer Challenge 12 USC 3410 <input type="checkbox"/> 591 Agricultural Acts <input type="checkbox"/> 592 Economic Stabilization Act <input type="checkbox"/> 593 Environmental Matters <input type="checkbox"/> 594 Energy Allocation Act <input type="checkbox"/> 595 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 990 Other Statutory Actions

VI. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

BREACH OF CONTRACT

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION
☐ UNDER F.R.C.P. 23

DEMAND \$

350 million

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ YES ☐ NO

VIII. RELATED CASE(S) IF ANY

JUDGE

DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

12-28-04
FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. TITLE OF CASE (NAME OF FIRST PARTY ON EACH SIDE ONLY) SPORTBOX LLC. V. MAJOR LEAGUE
BASEBALL & XFL RADIO

2. CATEGORY IN WHICH THE CASE BELONGS BASED UPON THE NUMBERED NATURE OF SUIT CODE LISTED ON THE CIVIL COVER SHEET. (SEE LOCAL RULE 40.1(A)(1)).

- I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.
- II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950. *Also complete AO 120 or AO 121 for patent, trademark or copyright cases
- X III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- V. 150, 152, 153.

3. TITLE AND NUMBER, IF ANY, OF RELATED CASES. (SEE LOCAL RULE 40.1(G)). IF MORE THAN ONE PRIOR RELATED CASE HAS BEEN FILED IN THIS DISTRICT PLEASE INDICATE THE TITLE AND NUMBER OF THE FIRST FILED CASE IN THIS COURT.

4. HAS A PRIOR ACTION BETWEEN THE SAME PARTIES AND BASED ON THE SAME CLAIM EVER BEEN FILED IN THIS COURT?

YES

NO

5. DOES THE COMPLAINT IN THIS CASE QUESTION THE CONSTITUTIONALITY OF AN ACT OF CONGRESS AFFECTING THE PUBLIC INTEREST? (SEE 28 USC §2403)

YES

NO

IF SO, IS THE U.S.A. OR AN OFFICER, AGENT OR EMPLOYEE OF THE U.S. A PARTY?

YES

NO

6. IS THIS CASE REQUIRED TO BE HEARD AND DETERMINED BY A DISTRICT COURT OF THREE JUDGES PURSUANT TO TITLE 28 USC §2284?

YES

NO

7. DO ALL OF THE PARTIES IN THIS ACTION, EXCLUDING GOVERNMENTAL AGENCIES OF THE UNITED STATES AND THE COMMONWEALTH OF MASSACHUSETTS ("GOVERNMENTAL AGENCIES"), RESIDING IN MASSACHUSETTS RESIDE IN THE SAME DIVISION? - (SEE LOCAL RULE 40.1(D)).

YES

NO

A. IF YES, IN WHICH DIVISION DO ALL OF THE NON-GOVERNMENTAL PARTIES RESIDE?

EASTERN DIVISION

CENTRAL DIVISION

WESTERN DIVISION

B. IF NO, IN WHICH DIVISION DO THE MAJORITY OF THE PLAINTIFFS OR THE ONLY PARTIES, EXCLUDING GOVERNMENTAL AGENCIES, RESIDING IN MASSACHUSETTS RESIDE?

EASTERN DIVISION

CENTRAL DIVISION

WESTERN DIVISION

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME _____

ADDRESS _____

TELEPHONE NO. _____